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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 BP WEST COAST PRODUCTS, LLC,
11 Plaintiff and Counter Defendant,

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14 vs.

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18 CROSSROAD PETROLEUM, INC.,
19 ET AL.,
20 Defendants and Counter Claimants.

21 AND RELATED CONSOLIDATED
22 ACTIONS

CASE NO. 12CV665 JLS (KSC)

**ORDER (1) GRANTING MOTION
FOR LEAVE TO FILE AMENDED
ANSWER TO FIFTH AMENDED
COMPLAINT; (2) DENYING AS
MOOT MOTION TO STRIKE
PORTIONS OF AMENDED
SUPPLEMENTAL FOURTH
AMENDED ANSWER; (3)
GRANTING MOTION TO
DISMISS; (4) GRANTING
APPLICATION FOR DEFAULT
JUDGMENT; AND, (5)
DECLINING TO IMPOSE
SANCTIONS**

(ECF Nos. 280, 282, 283, and 309)

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24 Presently before the Court are the Named Guarantors and Dealer Defendants'
25 Motion for Leave to File Amended Answer to Fifth Amended Complaint, (ECF No.
26 309), Plaintiff BP West Coast Products, LLC's ("BPWCP") Motion to Strike
27 Portions of Named Guarantors and Dealer Defendants' Amended Supplemental
28 Fourth Amended Answer [Fed R. Civ. P. 12(F)] and Request for Sanctions, (ECF
No. 282), BPWCP's Motion to Dismiss and Request for Sanctions, (ECF No. 280),

1 and BPWCP's Application for Default Judgment as Against Defendants Cohen's
 2 Gasoline, Inc., Matt Cohen, and Jennifer Cohen. (ECF No. 283.) Having reviewed
 3 the parties' arguments the law, the Court:

- 4 (1) **GRANTS** the Dealer Defendants' motion for leave to file an amended
 5 answer,
 6 (2) **DENIES AS MOOT** BPWCP's motion to strike portions of the Dealer
 7 Defendants' superseded pleading,
 8 (3) **GRANTS** BPWCP's unopposed motion to dismiss Defendant
 9 Ambartsumyan Corporation's ("Ambartsumyan") counterclaims,
 10 (4) **GRANTS** BPWCP's application for default judgment, and
 11 (5) **DECLINES** to impose sanctions on parties or counsel at this time.

12 **MOTION FOR LEAVE TO FILE AMENDED ANSWER**

13 The Dealer Defendants move for leave to file an amended answer to
 14 BPWCP's Fifth Amended Complaint. (ECF No. 309.) BPWCP filed a notice with
 15 the Court indicating that it does not oppose the Dealer Defendants' motion. (ECF
 16 No. 311.) Accordingly, the Court **GRANTS** the motion. The Clerk of the Court
 17 shall file the amended pleading, which is attached as Exhibit 1 to the Dealer
 18 Defendants' motion, as a separate entry on the docket.

19 In light of the Dealer Defendants' filing of an amended answer, BPWCP's
 20 motion to strike portions of the Dealer Defendants' prior pleading is **MOOT**.
 21 Accordingly, the Court **DENIES** BPWCP's motion. (ECF No. 280.)

22 **MOTION TO DISMISS**

23 BPWCP moves to dismiss Ambartsumyan's counterclaims. (ECF No. 282.)
 24 Ambartsumyan filed no opposition to BPWCP's motion. Accordingly, the Court
 25 **GRANTS** BPWCP's motion to dismiss. *See* CivLR 7.1(f)(3)(c). In light of the
 26 pleading defects identified in the motion, the dismissal is **WITH PREJUDICE**.

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MOTION FOR DEFAULT JUDGMENT

1. Legal Standard

Federal Rule of Civil Procedure 55 permits a court to enter default judgment “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend.” Although default judgments are ordinarily disfavored, a court may grant or deny default judgment at its discretion. *See Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988) (citing *Haw. Carpenters’ Trust Funds v. Stone*, 794 F.2d 508, 511–12 (9th Cir. 1986); *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980)). The Ninth Circuit has set out seven factors for a court to consider when exercising this discretion:

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Eitel, 782 F.2d at 1471–72.

When weighing these factors, the well-pleaded factual allegations of the complaint are taken as true, except for those allegations relating to damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987); *see also* Fed. R. Civ. P. 8(b)(6). To prove damages, a plaintiff may submit declarations or the Court may hold an evidentiary hearing. *See Affinity Grp., Inc. v. Balser Wealth Mgmt.*, No. 05cv1555, 2007 U.S. Dist. LEXIS 26331, at *3–4 (S.D. Cal. Apr. 10, 2007); *Taylor Made Golf Co. v. Carsten Sports*, 175 F.R.D. 658, 661 (S.D. Cal. 1997) (“In assessing damages, the court must review facts of record, requesting more information if necessary, to establish the amount to which plaintiff is lawfully entitled upon judgment by default.”).

2. Analysis

BPWCP moves for default judgment against Defendants Cohen’s Gasoline, Inc., Matt Cohen, and Jennifer Cohen (“the Cohen Defendants”). The Court finds

1 that, in light of the facts of this case, BPWCP's application for default judgment
2 must be **GRANTED**. Reviewing the *Eitel* factors, all favor BPWCP. Because the
3 Cohen Defendants have refused to participate in this lawsuit, no possibility of
4 dispute concerning material facts has been presented. Moreover, there is little
5 possibility of dispute because the Court takes all factual allegations in the complaint
6 as true based on the entry of default. *See TeleVideo Sys., Inc. v. Heidenthal*, 826
7 F.2d 915, 917–18 (9th Cir. 1987).

8 There is little or no evidence that the Cohen Defendants' default is due to
9 excusable neglect. They were served with process as early as September 7, 2012,
10 but have made no effort to appear in this suit. (*See* Mot. for Default J. 1, ECF No.
11 283-1.)

12 Denial of this motion would result in prejudice to BPWCP because they
13 would be unable to obtain the declaratory relief and damages that they seek in any
14 other forum. BPWCP seeks \$294,890.78 in damages, a very large sum. Although
15 the significant amount of damages sought would typically weigh against entry of
16 default judgment, BPWCP's request for damages is supported by evidence. (*See*
17 Mot. for Default J., Ex. C., ECF No. 283-3.) Also, the fact that the Cohen
18 Defendants refuse to participate in the judicial process renders a decision on the
19 merits virtually impossible. Thus, despite the policy favoring decisions on the
20 merits, these *Eitel* factors all weigh in favor of entering default judgment against the
21 Cohen Defendants.

22 The remaining *Eitel* factors are the second and third factors—the merits of the
23 substantive claim and the sufficiency of the complaint—both of which also favor
24 entry of default judgment. *Eitel*, 782 F.2d at 1471. BPWCP brings claims against
25 the Cohen Defendants for declaratory relief under the PMPA, as well as for damages
26 for breach of franchise and guaranty agreements. BPWCP alleges that it is entitled
27 to a declaratory judgment that its termination and non-renewal of the Cohen
28 Defendants' franchise comported with the notice and other requirements of the

1 PMPA. (Mot. for Default J. 5, ECF No. 283-1.) BPWCP also alleges that the
 2 Cohen Defendants accepted delivery of \$254,360.33 worth of gasoline, but failed to
 3 pay for it, that they owe \$3,952.83 in unpaid rent, and that their premature
 4 abandonment of their station left it in a state of disrepair such that BPWCP had to
 5 expend a total of \$49,077.62 to “remove trash, to ensure air permit renewals, for
 6 annual emissions fees, and for various maintenance issues.” (*Id.* at 5–6.) These
 7 allegations, taken as true, are sufficient to establish BPWCP’s claims under the
 8 PMPA and the franchise and guaranty agreements.

9 Accordingly, the Court **GRANTS** Plaintiffs’ motion and **HEREBY**
 10 **ORDERS** as follows:

11 (1) That BPWCP is entitled to declaratory judgment, and declaratory
 12 judgment is hereby entered, against defendant Cohen's Gasoline, Inc.
 13 on the First Claim for Declaratory Relief Under the PMPA, 15 U.S.C.

14 §§ 2801 *et seq.* holding:

- 15 a. The relationship between defendant Cohen’s Gasoline, Inc. and
 16 BPWCP was that of a franchise relationship as defined and
 17 provided by Section 2801 of the PMPA;
- 18 b. Under the PMPA, BPWCP lawfully terminated defendant
 19 Cohen’s Gasoline, Inc.’s franchise and franchise relationship
 20 with BPWCP based upon the expiration of the underlying Site
 21 Lease (as defined in the Complaint);
- 22 c. Under the terms of the franchise agreement between
 23 BPWCP and Cohen’s Gasoline, Inc., BPWCP lawfully
 24 terminated the franchise and franchise relationship based upon
 25 the expiration of the underlying Site Lease (as defined in the
 26 Complaint)
- 27 d. The Termination Notice sent to Cohen's Gasoline, Inc. was
 28 reasonable and appropriate under 15 U.S.C. § 2802(b)(2)(C) (the

- occurrence of an event which is relevant to the franchise relationship and as a result of which termination of the franchise is reasonable) and Section 2802(c)(4) (loss of the franchisor's right to grant possession of the leased marketing premises through expiration of an underlying lease);
- e. BPWCP did not hold any option to extend the underlying Site Lease or option to purchase the Premises at the time BPWCP provided Notice of Nonrenewal/Termination to the Cohen's Gasoline, Inc.;
 - f. The extension option provided for in the Master Lease (as defined in the Complaint) was impractical and impossible for BPWCP to exercise given that in order to exercise any of its extension options under the Master Lease, BPWCP was required to exercise the extension options in all Site Leases; and
 - g. BPWCP was not required to offer to assign to Cohen's Gasoline, Inc. its option to extend the underlying Site Lease or option to purchase the Premises under 28 U.S.C. § 2802(c)(4)(B).
- (2) That BPWCP is entitled to judgment to be entered, and judgment is hereby entered, against Cohen's Gasoline, Inc. and in favor of BPWCP on the Third Claim for Breach of Franchise Agreements and awarding BPWCP damages, and entering judgment, in the total amount of \$294,890.78. Furthermore, that BPWCP is entitled to post-judgment Interest on the above-referenced amount as permitted by 28 U.S.C. § 1961.
- (3) That BPWCP is entitled to judgment to be entered, and judgment is hereby entered, against defendants Matt Cohen and Jennifer Cohen, jointly and severally, and in favor of BPWCP on the Fifth Claim for Breach of Guaranty Agreements and awarding BPWCP damages, and

entering judgment, in the total amount of \$294,890.78. Furthermore, that BPWCP is entitled to post-judgment interest on the above-referenced amount as permitted by 28 U.S.C. S 1961.

(4) That the foregoing judgment against Matt Cohen and Jennifer Cohen is joint and several with the foregoing judgment against Cohen's Gasoline, Inc. but in no event shall the recovery against any one or more of the Cohen Defendants exceed an aggregate principal amount of \$294,890.78.

(5) That BPWCP has voluntarily dismissed the Eighth Claim for Relief for Conversion as against Cohen's Gasoline, Matt Cohen, and Jennifer Cohen.

REQUEST FOR SANCTIONS

BPWCP moves for the Court to impose sanctions on Dealer Defendants and their counsel for the filing of the non-operative “Amended Supplemental Fourth Amended Answer.” (ECF No. 282.) BPWCP also moves for the Court to impose sanctions on Ambartsumyan and its counsel for the filing of defective counterclaims. (ECF No. 280.)

A court may sanction a party that “unreasonably and vexatiously” multiplies proceedings. 28 U.S.C. § 1927. “To warrant sanctions . . . a court must find the attorney acted with recklessness or subjective bad faith.” *New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1306 (9th Cir. 1989). A party acts in bad faith when he “knowingly or recklessly raises a frivolous argument, or argues a meritorious claim . . . [to harass] an opponent.” *Estate of Blas v. Winkler*, 792 F.2d 858, 860 (9th Cir. 1986). The Court reserves “sanctions . . . for the ‘rare and exceptional case where’” the party commences a “clearly frivolous, legally unreasonable [action] without legal foundation” or “for an improper purpose.” *Primus Auto Fin. Servs. v. Batarse*, 115 F.3d 644, 649 (9th Cir. 1997) (quoting *Operating Eng’rs Pension Trust v. A-C Co.*, 859 F.2d 1336, 1344 (9th Cir. 1988)).

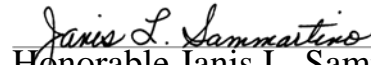
1 Without undertaking an exhaustive analysis, the Court, in its discretion,
2 declines to impose sanctions on parties or counsel at this time.

3 **CONCLUSION**

4 For the reasons stated above, the Court **GRANTS** the Dealer Defendants'
5 motion to file an amended answer, (ECF No. 309), **DENIES AS MOOT** BPWCP's
6 motion to strike portions of the Dealer Defendants' prior pleading, (ECF No. 280),
7 **GRANTS** BPWCP's motion to dismiss Ambartsumyan's counterclaims, (ECF No.
8 282), **GRANTS** BPWCP's application for default judgment against the Cohen
9 Defendants, (ECF No. 283), and **DECLINES** to impose sanctions on parties or
10 counsel at this time.

11 **IT IS SO ORDERED.**

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13 DATED: August 22, 2014

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15 Honorable Janis L. Sammartino
16 United States District Judge
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